

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN E. HARRELL,)	
)	
Petitioner,)	
)	
v.)	1:14CV184
)	
SORRELL SAUNDERS,)	
)	
Respondent.)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, together with an application to proceed *in forma pauperis*. For the following reason, the Petition cannot be further processed.

1. The filing fee was not received, nor was a proper affidavit to proceed *in forma pauperis* submitted and signed by Petitioner. Petitioner did submit a handwritten *in forma pauperis* application, but did not provide the total amount of funds deposited into his account in the past six months. This information is necessary for the Court to make an *in forma pauperis* determination.

Because of this pleading failure, the Petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*. To further aid Petitioner, the Clerk is instructed to send Petitioner a new application to proceed *in forma*

pauperis, new § 2254 forms, and instructions for filing a § 2254 petition, which Petitioner should follow.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed *in forma pauperis*.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition accompanied by the filing fee or a properly completed application to proceed *in forma pauperis*.

This, the 16th day of June, 2014.

/s/ Joi Elizabeth Peake
United States Magistrate Judge